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# AUSTRIA*

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## I. LAND AND PEOPLE

1. Austria covers part of the Alps and has a length of 573 km from west to the east. In the west, it has common boundaries with Switzerland and Liechtenstein, in the north with Germany, in the north and the east with Czechoslovakia and Hungary, in the south with Italy and Slovenia.

2. The federal territory covers an area of 83,855 square kilometres. The area of permanent settlement accounts for 32,900 square kilometres. The area used for agriculture amounts to 35,480 square kilometres and for forestry 31,910 square kilometres.

3. Austria has a residential population of 7.5 million, living in 2.7 million households. On average, there are 230 persons per square metre of the permanently settled area. The most densely populated areas are the big cities. Vienna, which accounts for 329.17 square kilometres of the area of permanent settlement, has a population of 1.5 million, i.e. 4,652 people per square kilometre. Densely populated cities (with a population of more than 1,000 per square kilometre of the permanently settled area) are Linz, Steyr, Wels, Salzburg, Graz, Innsbruck, Klagenfurt and Villach.

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* Annexes containing additional information regarding various indicators and statistical data can be consulted, in the language they were submitted, in the secretariat files.

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4. Austria has a total of 2,317 communities, 169 of which are cities and 670 are market towns. Not counting Vienna, 10.2 per cent of the residential population lives in communities of 5,000 to 10,000 inhabitants, of which there are 120. An almost equal percentage, i.e. 9.9 per cent of the residential population, lives in communities of 3,000 to 5,000 inhabitants, of which there are 200. Of the entire residential population, 7.2 million are Austrian nationals and 291,448 foreigners.

5. As regards material status, the situation is as follows: 3.1 million persons are single, 3.4 million are married, slightly less than 700,000 are widowed, somewhat less than 300,000 are divorced.

6. Of the whole residential population, 3.6 million persons are male, of whom 1.7 million are married, 1.6 million single and some 100,000 each are either widowed or divorced. The share of women in the residential population amounts to 3.9 million, of whom 1.7 million are married and 1.5 million single. Slightly more than 500,000 women are widowed, and 166,000 are divorced.

7. On the Austrian average, the surplus per thousand live births is 0.7. There is a negative surplus in the Burgenland, Lower Austria and Vienna and a positive surplus in the other states, the highest (6.1) being registered in Vorarlberg.

8. The trend of marriages and divorces is shown in annex 1.

9. The infant mortality rate has sharply decreased over the last 40 years. In 1951, it was 61.3 per thousand live births but was almost halved by 1961 (32.7). In the following years, it continued to drop and reached 8.3 in 1989 (see annex 2).

10. As far as life expectancy is concerned, reference may be made to annexes 2 and 3.

11. Over the last 20 years, the total amount of wages and salaries paid rose from AS 150.5 billion in 1970 to AS 714.3 billion in 1989. In the same period, employment increased from 2.3 million to 2.8 million. The per capita income of dependent employment in the national accounts rose from AS 5,290 to 20,960 gross in the mentioned period. In recent years, a steady increase of the annual per capita income has been registered, e.g. by 1.8 per cent in 1985, 3.6 per cent in 1986, 2.9 per cent in 1987, 1.4 per cent in 1988, and 1.9 per cent in 1989.

12. Private consumption rose from AS 205.2 billion in 1970 to AS 927.9 billion in 1989.

13. The gross domestic product (in billions of AS) rose from 1,173.83 in 1985 to 1,356.87 in 1988 and 1,577.30 in 1990.

14. In respect of the labour market, it must be pointed out first that, on the yearly average, a total of 3,441,600 people were employed in Austria in 1989, of whom 353,000 were self-employed and 2.9 million were workers and employees. Of the total employed, 2 million were men and 1.3 million women.

The proportion of the population which was gainfully employed amounted to 45.3 per cent in 1989, 56.3 per cent of whom were male and 35.3 per cent female employees.

15. As regards the rate of unemployment (share of unemployment in the labour force potential), it must be noted that while in 1960 it was 3.7 per cent, it dropped in the following years until it reached 1.8 per cent in 1977, then increased slightly and exceeded 5 per cent in 1986 by 0.2 per cent. In 1989, the rate of unemployment was down to 5 per cent, increased to an annual average of 5.4 per cent in 1990 and settled at 4.7 per cent in late August 1991. Total unemployment in late August 1991 numbered 150,861 of whom 137,731 were Austrians and 13,130 aliens.

16. The number of job vacancies, by comparison, was 50,790. Unemployment is slightly higher among women than men. Male unemployment in 1987, for instance, amounted to 5.5 per cent while female unemployment was 5.7. per cent. A considerable difference was registered in 1989, when the rate of unemployment was 4.6 per cent for men and 5.5 per cent for women. This difference also shows in the annual average for 1990. In that year, male unemployment was 4.9 per cent while women were at 6 per cent. In late August 1991, 79,428 women were registered as unemployed compared with only 71,433 men.

## II. GENERAL POLITICAL STRUCTURE

17. The Republic of Austria emerged in the wake of the breakdown of the Austro-Hungarian monarchy at the end of the First World War. When new national structures developed during the two years from the end of 1918 until 1 October 1920, a system of government emerged that was characterized by two significant features which still exist today, i.e. the parliamentary system of government and the federal structure of the State.

18. The constitutional development which took place immediately after the Republic of Austria came into existence was based on the fact that Parliament, whose members had been elected since February 1919, was the centre of political life. Parliament was the decisive power factor in Austria. The members of Parliament elected the government which was vested with executive responsibilities and remained politically answerable to Parliament. This basic idea was also embodied in the Federal Constitution which was adopted on 1 October 1920.

19. Under the Federal Constitution of 1920, the Nationalrat, whose members were elected on the basis of equal, secret, general and personal suffrage according to the principle of proportional representation, was also the national centre of political power. As before, it was the Nationalrat which elected the Federal Government, and the Federal Government in turn was accountable to the Nationalrat and could thus be dismissed by the Nationalrat on the basis of a vote of no confidence. In addition to the Federal Government, a head of State, i.e. the Federal President, was elected by both houses of Parliament, but he had little political influence. In particular, the Federal President initially was not empowered to appoint the members of the Federal Government or to dissolve the Nationalrat. When the Federal Constitution was amended in 1929, the parliamentary system of government was

not modified in principle but there was a certain shift in political power. The provision that the Federal President was to be elected by all citizens in the course of general elections was intended to strengthen his constitutional position. At the same time, he was also given authority to appoint the government and dissolve the Nationalrat.

20. Following the revision of the Federal Constitution in 1929, there are two organs under the Austrian system of government that are directly elected by the people and thus given equal authority, i.e. Parliament in the form of the Nationalrat on the one hand, and the Federal President on the other. Among the three major political organs at the federal level, i.e. the Nationalrat, the Federal President and the Federal Government, there is a system of balanced distribution of power: while the Federal Government is appointed by the Federal President it is responsible to the Nationalrat, so that in political reality the Federal President is obliged to appoint a Federal Government that can count on a parliamentary majority in the Nationalrat. The Federal President himself is elected every six years by way of general national elections. Politically, he is answerable to the Bundesversammlung, i.e. the national assembly made up of both the Nationalrat and the Bundesrat. On the other hand, the Federal President has the power - albeit only if the Federal Government so requests - to dissolve the Nationalrat, thus initiating new parliamentary elections. When the Federal Constitution was revised in 1929, the Nationalrat was stripped of its power to elect Federal Government although the Federal Government remained politically responsible to the Nationalrat. This created a system of government that may be considered as the "classic" system of parliamentary government.

21. In 1920, provision was also made for a system of government at the state level which was similar to that set up at the federal level and according to which the state parliaments, whose members are elected in the course of general state elections, elect the state governments. The state governments are politically responsible to the state parliaments. While the 1929 revision of the Federal Constitution shifted the political powers more to the Federal Government, there was no such change at the state level. Today, the system of government described above, where the state parliaments elect the state governments but are not authorized to dissolve them, still exists at the state level. One particular feature is that under the constitutions of most states the parties represented in the state parliament may claim government posts in proportion to their seats in the state parliament. In such a way, the state constitutions thus compel the parties to form coalition governments.

22. The second pillar of the Austrian system of government is the federal structure. Apart from the Bund (Federation) there are nine federal states, which means that there are nine different state governments and state parliaments in addition to the Federal Government. Austria's federal structure requires a vertical separation of powers according to which all national responsibilities are divided among the Federation and the states in such a way that under the Federal Constitution the powers which are not explicitly reserved to the Federation are vested in the states. Beginning in 1920, there was an increasing trend to expand federal powers. Over the last 20 years or so, this trend has reversed, however, and there are now strong tendencies to expand the powers, and thus also the responsibilities, of the states.

23. The federal structure of the Republic of Austria derives its particular form from the fact that the states are largely responsible for the execution of federal laws within the framework of what is called "indirect federal administration". The particularity of indirect federal administration is that the execution of federal acts - which means a broad activity of the federal administration - is done by the public authorities of the states. In doing so, however, these authorities are bound by the instructions of the competent members of the Federal Government. This type of executive responsibility nevertheless grants the states considerable influence on the execution of federal laws. In addition, the states are responsible for executing their own laws which is done - apart from individual cases where the law courts have jurisdiction - exclusively by state authorities. A special form of execution is the execution of federal laws by the state governments without the federal authorities being able to issue instructions. Moreover, there is also what is called "direct federal administration", where federal laws are executed directly by federal authorities set up in the states. Here, however, it must be added that this administrative aspect is comparatively narrow. It includes, for instance, fiscal authorities, matters pertaining to the army or the labour market authorities.

24. In addition to this sector of the public administration, mention must be made of the aspect of self-government, which is primarily the right of the communities. In 1989, where were 2,317 communities in Austria (3,183 in 1970). As self-governing bodies, these communities are in charge of all matters which, according to article 118, paragraph 2, of the Federal Constitution, are "exclusively or preponderantly the concern of the local community as personified by a Gemeinde (community) and suited to performance by the community within its local boundaries". While communities are subject to legal supervision by the authorities of ordinary public administration, they are not subject to control in respect of expediency. Moreover, they are bound by the provisions of public law. In addition to the communities, other self-governing entities are the professional representative bodies and the social insurance institutions.

25. The following applies to the organization of the executive, legislative and judicial organs.

26. The supreme executive bodies at the federal level are the Federal Government and its members, and the state governments at the state level. As already mentioned earlier, the state authorities are basically also in charge of executing federal legislation. Original jurisdiction in the execution of federal and state legislation lies, as a rule, with the administrative authorities at district level, of which there are 99. From there, cases go to the second or appellate instance, which is the state governor, and in matters pertaining to the state administration, to the state government (this also applies, as mentioned, to the specific case that federal acts are executed by the state administration without the Federation being able to issue instructions). In individual cases of federal administration, there is a third instance, i.e. the competent federal minister. In addition to this administrative structure which, as a rule, is in charge of handling administrative affairs, there are special authorities both of the state and the Federation (direct federal administration). In the sphere of local

administration, the affairs of the community are generally handled by the mayor as authority of first instance and the town council as authority of second instance.

27. At the federal level, legislation is taken care of by the Nationalrat and the Bundesrat, being the representative body of the states in Parliament. The 183 members of the Nationalrat are elected by the citizenry on the basis of equal, direct, secret and personal sufferage of women and men who have completed their nineteenth year of age according to the principle of proportional representation. Legislation of the states is passed by the state parliaments, the membership of which is elected by the citizens of the respective state according to the same principles.

28. The Bundesrat takes part in federal legislation as the representative body of the states. It is composed of the representatives of all states, whose number depends on the size of the respective state, the maximum being 12 and the minimum being 3 representatives. They are elected by the state parliaments for the duration of the legislative term of the state parliaments. As a rule, the Bundesrat has only a suspensive veto in respect of bills adopted by the Nationalrat which means that having been vetoed by the Bundesrat, a bill can be adopted if it is passed by the Nationalrat again (the Bundesrat has the right of approval, which cannot be circumvented by an overriding decision, in respect of constitutional provisions which restrict the responsibilities of the states).

29. The court system in Austria is divided into ordinary civil and criminal courts, on the one hand, and public law courts, on the other. Ordinary administration of justice is exercised at the lowest level by 202 district courts. Superior to them are the regional and circuit courts which are subordinate to the courts of appeal that have jurisdiction over several states. Ordinary jurisdiction eventually ends with the Supreme Court which is competent for all of Austria. The judicial system is based upon the principles of the independence, irremovability and intransferability of judges and on the fixed allocation of cases.

30. As regards public law courts, there are only two central courts, i.e. the Constitutional Court and the Administrative Court. Both courts are in charge of monitoring the public administration; they have no jurisdiction in respect of ordinary law. The major task of the Constitutional Court is to decide on alleged interferences with fundamental rights. The Constitutional Court is also empowered to decide ex officio on the constitutionality of laws or other legal rules following a request by the Administrative Court, the Supreme Court or a court of second instance or after an application has been filed by someone who alleges that a law directly interferes with his rights in so far as the law has become operative for the applicant without the delivery of a judicial decision or the issue of a ruling.

31. The Administrative Court decides whether an administrative decision violates a legal rule, provided that it is not a case of an interference with fundamental rights.

32. If a decision of the public administration is a matter to be decided by the Constitutional or Administrative Courts and found to be unlawful or in

contravention of the Federal Constitution, the decision is rescinded. If a decision by an administrative authority was based upon an application of a party, the authority issuing this decision is obliged to take a new - and thus lawful - decision in the spirit of the legal opinion of the Constitutional or Administrative Courts.

33. In early 1991, special tribunals were set up at the state level which are competent to decide in proceedings to set penalties aside which have been imposed by administrative organs. These tribunals also decide in proceedings to set administrative acts aside which interfere with a person's rights in a way other than by decision (such as seizures, arrests, shut-downs of enterprises without prior proceedings, etc.). The decisions of these tribunals may also be challenged in public law courts by means of complaints.

## II. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

34. It must first be pointed out that there is a difference between the ordinary judicial system and the public administration. In Austria, the principle prevails that the ordinary judicial system is separate from the public administration, thus ruling out a mutual review of legal decisions. Therefore, it is impossible for the lawfulness of an administrative decision to be examined by an ordinary law court just as the legality of a judicial decision cannot be reviewed by the public administration. It is incumbent on all courts of law and administrative authorities to respect human rights and take them into consideration when deciding a case.

35. Regarding the legal remedies that are available if someone alleges a violation of his civil rights, a difference must again be made between the sphere of ordinary law and the public administration. However, both spheres are governed by the common principle that there is in each sphere at least one facility where a judicial decision of the ruling of an administrative authority may be challenged by alleging that such decision or ruling violates fundamental rights. The body seized with such an allegation must examine the challenged decision in the light of the alleged violation of a fundamental right and must issue a new ruling by taking the system of fundamental rights into account. (In doing so, ordinary courts of law must also consider whether the legal provisions to be applied in the specific case are in conformity with the principles of human rights. If an appellate court has doubts as to whether or not a law violates human rights and might thus be unconstitutional, it must file an application with the Constitutional Court to review that law.)

36. The significant distinction between the ordinary judicial system and the public administration is that the public administration, unlike ordinary courts of law, is subject to the extraordinary external jurisdiction of the Administrative Court and the Constitutional Court (this also applies to the above-mentioned tribunals). If all available administrative remedies have been exhausted, which means that if the supreme competent administrative authority (or tribunal) has taken a decision on the case, the decision may be challenged before the Administrative or Constitutional Court. It is also possible simultaneously to challenge an administrative ruling before both courts. If the complaint is based on the allegation that the administrative decision interferes with fundamental rights, it is the Constitutional Court that is responsible for examining the allegation. Accordingly, such

complaints are filed with the Constitutional Court. The constitutional basis for this is provided for by article 144 of the Federal Constitution, paragraph 1 of which reads as follows:

> "The Constitutional Court pronounces on rulings by administrative authorities in so far as the applicant alleges an infringement of the ruling of a constitutionally guaranteed right or the infringement of personal rights on the score of an illegal ordinance, an unconstitutional law, or an unlawful treaty ... The complaint can only be filed after all other stages of legal remedy have been exhausted."

37. As the cited constitutional provision shows, there are two types of complaints. The first is a complaint against the decision of an administrative authority, alleging that the decision as such interferes with a constitutionally guaranteed right, i.e. a fundamental right. In such cases, the Constitutional Court decides whether the applicant's allegation of an infringement of his basic rights actually applies. If the Constitutional Court shares this view and thus comes to the conclusion that the challenged ruling violates the applicant's fundamental rights, it rescinds the ruling. The legal consequence is that the authority issuing the challenged ruling must take a new decision in the case, paying due regard to the legal view of the Constitutional Court. It must be added that the new ruling by the administrative authority may, of course, again be challenged before the Constitutional Court.

38. The second type of complaint is not aimed at challenging a ruling which interferes with a fundamental right. The complaint rather claims that the legal basis of the ruling violates the Constitution, for instance a fundamental right (in the case of an ordinance, it is sufficient to claim that it violates a law). The reason why this type of complaint can be filed is that all administrative authorities are bound by extant legal regulations, so that the administrative authorities have to apply regulations that interfere with fundamental rights and may therefore be unconstitutional. It is not up to the administrative authorities to judge themselves whether a legal provision they have to apply is in conformity with fundamental rights and, if not, to refrain from applying this provision. This type of complaint enables the applicant to argue that an applied legal provision is contrary to fundamental rights. It is for the Constitutional Court to examine whether the arguments raised against a legal provision, challenging its constitutionality and conformity with fundamental rights, are sufficiently substantiated. If the Constitutional Court shares the applicant's view that the legal provision underlying the ordinance could mean an interference with fundamental rights, the Court suspends the proceedings and initiates specific review proceedings in respect of the legal provision concerned. If the Constitutional Court finds that the reviewed legal provision does not interfere with fundamental rights, the complaint challenging the ruling is rejected. However, should the Constitutional Court find that the challenged provision does interfere with fundamental rights, it rescinds the provision and, as a rule, the ruling based on such provision as well.

39. It is not only formal administrative decisions that may constitute an interference with fundamental rights but actual measures as well. Such measures include, for instance, arrest or official seizure of an article,

which may give rise to an unlawful interference with fundamental rights. Since January 1991, a specific remedy is available against such measures by administrative authorities, i.e. a complaint to be filed with the so-called independent administrative tribunals that were set up in the states. The independent administrative tribunals are administrative authorities although their members enjoy all the guarantees granted to a judge, with the exception that the state legislature may provide for a time-limit of their term of appointment which, however, must be at least six years. Thus, independent administrative tribunals are not courts in the narrow sense but tribunals. They decide, among other things, whether concrete measures taken by an authority interfere with the sphere of fundamental rights of the person concerned.

40. This decision is taken in the course of court-like proceedings on the merits of the case, and are governed by the principles of orality and immediacy. Because independent administrative tribunals are administrative authorities, their decisions may also be challenged before the Constitutional Court in accordance with article 144 of the Federal Constitution.

41. The following may be said as regards the consequences of a judgement of the Constitutional Court which rescinds a ruling because of an interference with fundamental rights.

42. In administrative appellate proceedings, any appeal against a ruling has suspensive effect while in Constitutional Court proceedings, where a ruling is challenged for interfering with fundamental rights, there is no such suspensive effect. The Constitutional Court may nevertheless attribute such an effect to a complaint, and as a rule this is what happens. Therefore, if a ruling is rescinded by the Constitutional Court for interfering with fundamental rights, the actual situation in the majority of cases is that as regards the applicant an effective interference with his fundamental rights has not yet occurred. The fact that the authority, being bound by the legal opinion of the Constitutional Court, has to issue a new ruling largely guarantees that such an interference is avoided. Apart from that, the applicant has the opportunity, as already stated, to appeal against the new ruling of the authority again.

43. In special cases an actual measure by an authority may interfere with fundamental rights, as may be the case when somebody is arrested or articles are officially seized. Even before the authority has decided whether the arrest or seizure in fact interferes with fundamental rights, the arrest actually became effective or the articles were seized. If an independent administrative tribunal declares the actual measure of the authority to be unlawful on the grounds that it interferes with fundamental rights, the authority is obligated, provided that the measure is still in force (e.g. that the person is still being detained) to lift the measure and release the person concerned. If, following the decision of the independent administrative tribunal, the Constitutional Court is seized with the case, the Court must set the decision aside if it finds that the underlying interference constitutes a violation of fundamental rights that went unnoticed by the independent administrative tribunal; thereupon, the independent administrative tribunal, being bound by the legal view of the Constitutional Court, has to declare the

measure unlawful. This translates into reality the basic principle that in such cases the authority's actual measure must be revoked as far as possible.

44. Eventually, a person whose fundamental rights have been interfered with also has the possibility to claim that the public authority assume liability for its action. This claim aims at the adjudication of damages and must be raised before the courts of law. In this respect, the Official Liability Act (sec. 1, para. 1) says:

> "The Federation, the States, the districts, the communities, other public law entities and the social insurance institutions - hereafter called "the entities" - shall be liable under the provisions of civil law for any pecuniary or physical damage which the persons acting as their agents have culpably inflicted on whomever in the execution of the laws by unlawful conduct; the agent shall not be liable to the injured person. Damages shall not be awarded in any form other than financial indemnification."

Hence, such cases are governed by the civil law on damages. For this purpose, certain requirements must be met, i.e. the unlawfulness and culpability of the authorities' conduct established and the fact that the damage was caused due to the fault of the authorities. If an independent administrative tribunal and the Constitutional Court have ascertained that an act of the authorities was unlawful, that fact must be the starting-point for the court in an official liability action. As the courts have generally recognized the principle of reparation of non-material damage, the question still remains whether the authority acted in a culpable manner. That, as a rule, along with the amount of damages to be paid, are matters to be decided by the court.

45. In 1920, when Austria adopted a Federal Constitution, legislators were unable, during the negotiations being conducted at the time, to agree on a new list of fundamental rights. It was therefore decided to incorporate the fundamental rights then in force into the new Constitution, namely:

(a) The Law of 27 October 1862 for the protection of personal liberty;

(b) The Law of 27 October 1862 for the protection of the home;

(c) The Basic Law of the State of 21 December 1867 concerning the general rights of citizens;

(d) The resolution of 30 October 1918 of the Provisional National Assembly.

These four Laws constitute the foundations of the human rights guaranteed by the Austrian Constitution. Under article 149, paragraph 1, of the Federal Constitution, these laws are an integral part of the Constitution of the Republic of Austria and, as before, are an integral part of the constitutional system currently in force.

46. As mentioned above, the Constituent National Assembly was unable in 1920 to reach agreement on a new list of fundamental rights, but some of these

rights were incorporated into the Federal Constitution. This was the case, first of all, for the principle of equality before the law, set out in article 7, paragraphs 1 and 2, of the Federal Constitution:

> "1. All Federal nationals are equal before the law. Privileges based upon birth, sex, estate, class, or religion are abolished.
>
> "2. Public employees, including the members of the Federal Army, are guaranteed the unrestricted exercise of their political rights."

47. Regarding education, regulations extended the principle of equality before the law to cover general access to schools. Article 14, paragraph 6, of the Federal Constitution states:

> "Admission to public schools is open to all without distinction of birth, sex, race, status, language and religion, and in other respects within the limits of the statutory requirements. The same applies analogously to kindergartens, centres and student hostels."

48. The right to vote is proclaimed as a fundamental right in the Federal Constitution. Article 26, paragraph 1, first sentence, states:

> "The Nationalrat is elected by the nation in accordance with the principles of proportional representation on the basis of equal, direct, secret and personal suffrage for men and women who have completed their nineteenth year of life on a day appointed prior to the election."

49. Regarding eligibility, article 26, paragraph 4, of the Federal Constitution reads: "Eligible for election is every qualified voter who has completed his/her twenty-first year of life before the day appointed prior to the election". The same principles apply to the election of the President of the Republic (art. 60, para. 1): "The Federal President is elected by the nation on the basis of equal direct, secret and personal suffrage."

50. As regards eligibility to stand for election to the office of President of the Republic, article 60, paragraph 3 of the Federal Constitution states:

> "Only a person who has Nationalrat franchise and was thirty-five years old before the first of January of the year in which the election is held can be elected Federal President. Members of reigning houses or of reigning families are excluded from eligibility."

51. The voting principles applicable to elections to the Nationalrat also apply to elections to the Landtage (State parliaments), governed by article 95, paragraph 1, of the Federal Constitution and to elections to the town councils, governed by article 117, paragraph 2, of the Federal Constitution.

52. The Federal Constitution states that all persons have a fundamental right to an equitable trial presided by a judge: "No person may be withheld from the judge assigned to him by law". In this context, it should also be

mentioned that a constitutional regulation authorizing recourse to courts of special jurisdiction for special cases has been abolished, and that such courts are not recognized by the Constitution at present in force.

53. The provisions in the Federal Constitution concerning fundamental rights also include article 85: "Capital punishment is abolished", and article 90, paragraph 1: "Hearings in civil and criminal cases before the trial court are oral and public. Exceptions are regulated by law".

54. Finally, mention should be made of the provision contained in article 9 (a), paragraph 3, of the Federal Constitution which implicitly guarantees male Austrian citizens the right to refuse to perform military service because of conscientious objection. This provision reads as follows:

> "Every male Austrian national is liable for military service. Conscientious objectors who refuse the fulfilment of compulsory military service and are exonerated therefrom must perform an alternative service. The details are settled by law."

55. The Treaty of St. Germain, which for Austria put an end to the state of war after the First World War, contains provisions relative to the "Protection of minorities" (part III, section V). Under article 149, paragraph 1, of the Federal Constitution, these provisions are also an integral part of the Austrian constitutional system so that they have the status of constitutional law even today.

56. Under a Federal Constitutional Law of 1964, the European Convention for the Protection of Human Rights and Fundamental Freedoms and several provisions of the 1955 Treaty of Vienna concerning fundamental rights acquired constitutional law status.

57. It should also be mentioned that the International Convention on the Elimination of All Forms of Racial Discrimination was ratified by Federal Constitutional Law of 3 July 1973. Article 1 of that Law states:

> "1. Any form of racial discrimination - also if not already conflicting with Article 7 of the Federal Constitution, as revised in 1929, and with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms - shall be prohibited. The legislative and executive powers shall refrain from any discrimination on the sole ground of race, colour, descent or national or ethnic origin.
>
> "2. Notwithstanding paragraph 1, particular rights may be granted to or particular obligations imposed upon Austrian nationals, in so far as this does not conflict with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

58. In short, it might be said that the Austrian constitutional system guarantees respect for human rights essentially through the 1867 Basic Law of the State concerning the general rights of citizens and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The

fundamental rights thus guaranteed therefore have the status of directly applicable law, which is binding on both the legislature, the executive and court practice.

59. Fundamental rights should be regarded primarily as civil liberties which protect all citizens against illegal interference by the authorities. Fundamental rights must also be respected by public servants and by the courts when applying the law. Whenever the laws to be applied by public servants or the courts need to be interpreted, this must be done with full respect for fundamental rights. It is a generally accepted principle that all legal provisions must be interpreted in a manner not incompatible with fundamental rights.

60. As regards the interrelation between domestic law and international law, the Austrian Federal Constitution offers two possibilities. The first one, which is generally applied, is to the so-called "general transformation" of international law into domestic law. This means that an international treaty, after having been approved by the Nationalrat and ratified by the Federal President, is promulgated in the Federal Law Gazette and thus transformed into domestic law without restriction. The second possibility under the Federal Constitution is that an international treaty is approved by the Nationalrat with the reservation that the requisite laws for its application in Austria will be adopted. In such case, the international treaty is also promulgated in the Federal Law Gazette but does not become effective domestically, which means that it is binding upon the Republic of Austria only in relation to other States. Obligations arising from this international treaty must be fulfilled by the legislature adopting the requisite legislation.

61. As the above explanations already show, only the European Convention for the Protection of Human Rights and Fundamental Freedoms was converted into domestic law and was given constitutional law status in 1964.

62. What has been said above provides an answer to the question whether the provisions of international instruments for the protection of human rights may be invoked directly before Austrian authorities. This applies only to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

63. In the present context, reference may be made to the Volksanwaltschaft, which corresponds to the ombudsman set up in other countries. The tasks of the Volksanwaltschaft are defined in article 148a, paragraphs 1 and 2:

> "(1) Everyone can lodge complaint with the Volksanwaltschaft against alleged maladministration by the Bund, including its activity as a holder of private rights, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All such complaints must be investigated by the Volksanwaltschaft. The complainant shall be informed of the investigation's outcome and what action, if necessary, has been taken.
>
> (2) The Volksanwaltschaft is ex officio entitled to investigate its suspicions of maladministration by the Bund, including its activity as a holder of private rights."

64. The Volksanwaltschaft has a wide range of tasks, i.e. to deal with cases of maladministration by the public administration. Under this aspect, of course, the jurisdiction of the Volksanwaltschaft includes cases of interference with the citizens' fundamental rights and freedoms by the public administration.

65. It is the task of the Volksanwaltschaft to examine a concrete case. The outcome of this examination is communicated to the supreme organs of the public administration - if such maladministration by the public authorities has been ascertained - together with a recommendation. The supreme administrative organs either have to comply with this recommendation or inform the Volksanwaltschaft in writing within an appropriate period of time of the reasons why they do not comply with the recommendation.

## IV. INFORMATION AND PUBLICITY

66. The wording of all international instruments for the protection of human rights are promulgated in the Federal Law Gazette and therefore are accessible to everybody at almost no cost. In addition, there are several publications of law texts which also contain the wording of these instruments. A translation into languages other than German has proved unnecessary.

67. The reports required under the international instruments for the protection of human rights are collectively prepared by the Federal Chancellery with the assistance, as a rule, of other federal ministries. They are not the subject of public discussion.

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